IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**WRIT PETITION NO : 24281 of 1999**

Between:

P.V.K.Murthy, S/o. P.Veeranna.
R/o. Amalapuram, East Godavari.

**..... PETITIONER**

AND

1 Industrial Tribunal-cum-Labour Court, Rep. Chairman &
Presiding Officer, Visakhapatnam.
2 The Depot Manager, APSRTC., Amalapuram, East Godavari.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Certiorari, calling for the records pertaining to the Award in I.D.No.141/1996 dated 09/08/1999 on the file of the Respondent No.1 and the consequential gazette in G.O.Rt.No.1707 dated 20/09/1999 and quash the same as illegal, arbitrary and unconstitutional and consequently set aside the removal order issued by the 2nd respondent in Procs.No.PA/62(56)/95-AMP dated 18/12/1995 including the Award in I.D.No.141/96 of the 1st respondent dated 09/08/1999 and reinstate the petitioner into service as Conductor along with all consequential benefits.

**Counsel for the Petitioner: MR.G.RAVI MOHAN**

**Counsel for the Respondent No.1: G.P. for Labour.**

**Counsel for the Respondent No.2: Mr. V.T.M. Prasad**

**The Court made the following :**

**THE HON'BLE SRI JUSTICE B.PRAKASH RAO**

WRIT PETITION No. 24281 of 1999

**O R D E R :**

Heard Sri G.Ravi Mohan, learned counsel for the petitioner and Sri V.T.M. Prasad, learned standing counsel appearing on behalf of the second respondent and the learned Government Pleader for Labour appearing on behalf of the first respondent.

The petitioner, who had been working as a Conductor with the second respondent, a corporation, filed this Writ Petition, *inter alia*, seeking a Writ of Certiorari challenging the award in I.D. No.141 of 1996 dated 09.08.1999 passed by the first respondent and the notification issued in Gazette in G.O. Rt. No. 1707, dated 20.09.1999, as bad, illegal and void.

The case of the petitioner, in brief, is that having been appointed as Conductor in the second respondent-corporation in the year 1976, he has been discharging his duties to the utmost satisfaction. However, according to him, a check was made on 09.08.1995 while he was conducting a bus on Amalapuram to Mummidivaram route, where, on the allegation of certain irregularities, the petitioner was kept under suspension and ultimately after holding enquiry, he was removed from service on 18.12.1995 on the basis of the findings on five charges levelled against him. Though the petitioner denied the allegations in the said charges, however, the same were not considered in spite of his giving due explanations and even his past record also has not been kept in view and thus, the removal order is wholly vitiated and has absolutely no nexus to the gravity of the charges. Thereupon, the petitioner invoked the Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, “the Act’), and ultimately the

matter was referred to the first respondent in I.D. No. 141 of 1996. In the said proceedings, the first respondent framed the following points viz. whether the removal of workman on the grounds of alleged reissue of tickets is liable to be set aside and he should be reinstated; and if he is reinstated, what are the benefits the workman is entitled.

Though the documents Exs.M1 to M16 were marked on behalf of the petitioner, no oral evidence has been let in on either side. The first respondent in exercise of powers under Section 10 of the Act, straight away took upon the weighing and consideration of the facts and circumstances vis-à-vis the documents as marked and held that the management did not act without any basis in passing the award of removal of workman from service.

The learned counsel for the petitioner by placing reliance on the principles laid down by Division Bench of this Court in *The Divisional Manager, LIC, Visakhapatnam v. S.S.Rajan & another* submitted that the first respondent, in fact, did not take into consideration or kept in view, the procedure as contemplated under Section 11-A of the Act and without giving any finding thereon, sought to go into the merits, which is illegal.

The learned standing counsel appearing on behalf of the second respondent sought to sustain the award mainly on the ground that even on the facts and circumstances, the punishment as imposed is perfectly justified and therefore, the finding as arrived at by the first respondent can not come up for consideration under Article 226 of the Constitution of India.

Considering the submissions made on both sides, the point which crops up for consideration is as to whether the award of the first respondent in pursuance of reference as made under Section 2-A(2)

of the Act without considering or without going into the question as to the correctness of the punishment as contemplated under Section 11-A of the Act, is valid ?

There is no dispute to the facts as stated above in regard to the petitioner's service with the second respondent and the check made on 09.08.1995 wherein certain irregularities were found by the checking officials and placing of the petitioner under suspension. It is also not in dispute that the first respondent issued a charge sheet on 22.08.1995 in regard to the irregularities containing in all five charges, and after holding a departmental enquiry, the petitioner was ultimately removed from service. The charges as framed against the petitioner are as follows:

1. "For having re-issued the ticket bearing No.776/822081 Rs.3.25 demn. to a passenger who boarded bus at Amalapuram and bound for Mummidivaram (Ex-stages 1 to 4) while you were conducting the vehicle No.AP9Z 4110 on the route Amalalpuram-G. Moolapalem on 9.8.95 and the above ticket was already sold at stage No.8 while you were conducting the vehicle no.8852 on the route Mukteswaram-Gannavaram in 8.00 hrs. trip on 6.8.95 and accounted in the SR No.0847838, dt. 6.8.95 which constitutes misconduct under Reg. No.28 (xxii) and (xxxii) of APSRTC Employees' (conduct) Reg., 1963.

2. For having reissued the ticket bearing nos. 796/821201, 205 and 206 of Rs. 3.25 demn. to three individual passengers who boarded the bus at Amalapuram and bound for Mummidivaram (ex-stages 1 to 4) while you were conducting the vehicle no. AP9Z 4110 on the route Amalapuram-G.Moolapalem on 9.8.95 and the above tickets were already sold at stage No.2 while conducting the vehicle no.8852 on the route Gannavaram-Mukteswaram in the 9.25 hrs. trip on 6.8.95 and accounted in SR No.847838 dt.6.8.95 which constitutes misconduct under Reg. No. 28 (xxiii) and (xxxii) of APSRTC Employees' (conduct) Reg., 1963.

3. For having reissued the ticket bearing nos. 796/821219 of 220 and 235 of Rs. 3.25 demn. to three individual passengers who boarded the bus at Amalapuram and bound for Mummidivaram (ex-stages 1 to 4) while you were conducting

the vehicle no.AP9Z 4110 on the route Amalalpuram-G.Moolapalem on 9.8.95 and the above tickets were already sold at stage no.5 while you were conducting the vehicle No.8852 on the route Gannavaram-Mukteswaram on 9.25 hrs. trip on 6.8.95 and accounted in the SR No.0847838, dt.6.8.95 which constitutes misconduct under Reg. No. 28 (xxiii) and (xxxii) of APSRTC Employees' (conduct) Reg., 1963.

4. For having reissued the ticket bearing No.960/983755 of Rs.2.25 demn. To a passenger who boarded the bus at Amalapuram and bound for Anathavaram ex-stages 1 to 3 while you were conducting the vehicle no.aP9Z 4110 on the route Amalapuram-G.Moolapalem on 9.8.95 and the above ticket was already sold at stage no.5 while you were conducting the vehicle no.8852 on the route Gannavaram-Muteswaram in 12.20 hrs. trip on 6.8.95 and accounted in SR No.A3/0847838, dt.6.8.95 which constitutes misconduct under Reg. 28(xxiii) and (xxxii) of APSRTC Employees' (conduct) Reg., 1963.

5. For having provocated the passenger of your bus while framing the case on 9.8.95 as a result the TTI's could not serve the charge memo on you on the spot at the time conducting the vehicle No.AP9Z 4110 on the route Amalapuram-G.Moolapalem on 9.8.95 which constitutes misconduct under Reg. No. 28 (xxxii) of APSRTC Employees' (conduct) Reg., 1963."

The appeal filed by the petitioner against the order of removal stood dismissed and ultimately the matter went to the first respondent on a reference. During the said proceedings, as stated above, neither side let in any evidence orally, but the documents filed by the petitioner were marked as Exs. M1 to M16. In fact, a memo has been filed on behalf of the petitioner that he was not questioning the correctness of the departmental enquiry. In view of the same, it necessarily follows that the Labour Court has to consider correctness of the punishment vis-à-vis the gravity of the allegations as made against the petitioner. The question as to the necessity for going into such aspects or the question in regard to the punishment to be imposed in commensurate with the gravity of the misconduct, is no longer *res integra*. In the aforesaid decision relied on by the petitioner (1 supra), a Division

Bench of this court held that the same is mandatory. In the absence of any such finding given, it is also held that this court can as well award proper punishment. The said principle was also reiterated by a learned single Judge of this Court in *N. Chinnaiah v. Depot Manager, APSRTC, Nizamabad & another*.

Having taken into consideration the facts and circumstances of the case and especially in view of the fact that the check was made as long back as on 09.08.1995 and the petitioner was removed from service on 18.12.1995 with all the delay in the proceedings, it is not necessary to send the matter back to the first respondent. In stead, as held in the aforesaid decision, the quantum of punishment can as well be gone into by this Court. Taking the totality of the circumstances and the charges as framed against the petitioner and ultimately the findings as given, necessarily it follows that the imposition of punishment of removal from service on such allegations, is wholly excessive and does it in no way commensurate with their gravity.

The Writ Petition is, accordingly, allowed directing reinstatement of the petitioner back into service with continuity of service, however, without any back wages. There shall be no order as to costs of this case.

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(B.Prakash Rao, J.)

07.02.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice

On Monday the seventh day of February Two thousand and five.

…. Registrar

Copy to:

1 The Chairman, Industrial Tribunal-cum-Labour Court, Visakhapatnam.
2 The Depot Manager, APSRTC., Amalapuram, East Godavari.

3 Two CCs to the G.P. for Labour, High Court of A.P., High Court buildings,

Hyderabad (o.u.t.).

4 Two CD copies.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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